IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4275 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANJIBHAI JIVANJI PATEL & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 9 - Respondent(s)

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Appearance :
MR JB PARDIWALA for Petitioner(s) : 1 - 2.
MR MR MENGDEY ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
RULE SERVED for Respondent(s) : 4 - 10.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/04/2007

ORAL JUDGMENT

1. Shri J.B. Pardiwala, learned counsel for the petitioners; Shri M.R. Mengdey, learned AGP for the respondents no. 1 to 3; none for the respondents no.

4 to 12 though served.

2. The petitioners, being aggrieved by the order dated 26.3.87, passed by the Deputy Collector in Appeal No. RTS 63/85, order dated 1.9.88, passed by the Collector, Valsad in RTS Revision No. 11/87 and the order dated 16.9.89, passed by the Additional Principal Secretary [Appeals], Revenue Department in SRD/Valsad/HKP/22/88, are before this Court with a submission that the orders are bad and illegal, because, same have been passed without giving any notice or opportunity of hearing to the petitioners.

3. The short facts necessary for disposal of the present petition are that agricultural land bearing Survey No. 215 of village Palan was jointly recorded in name of Shri Maganbhai Durlabhbhai and Shri Lalbhai Nichabhai Desai. It is not in dispute and is also found as a fact that these two joint owners were not relations but were simple partners. Shri Maganbhai Durlabhbhai, during his lifetime in the year 1968, vide sale deed dated 4.1.68 registered on 11.1.68, sold surveys no. 145, 156, 151, 152, 153, 147, 148, 149 and 150, which, according to the petitioners were contiguous to each other, to the

petitioners for appropriate consideration. It is also to be seen that Shri Lalbhai Nichabhai Desai had filed Special Civil Suit No. 20 of 1960 against the joint owner Shri Maganbhai Durlabhbhai in respect to the land jointly held at village Palan. The suit was filed before the Civil Court [Senior Division] Surat. A consent/compromise decree was made on 8.6.63, decree clearly provided that half of the land of Block No. 215 would belong to Shri Maganbhai Durlabhbhai, while other half on the western side would belong to Shri Lalbhai Nichabhai. Thereafter, various entries were made, the matter went up to the Tribunal on the ground that such partition was leading to fragmentation but those two joint owners succeeded in their effort and the matter was decided in their favour.

4. Shri Maganbhai Durlabhbhai died on 4.1.82 despite partition effected in Civil Suit No. 20/60, legal representatives/successors of Shri Lalbhai Nichabhai made an application for mutation of their names, claiming that they had succeeded to the property belonging to Shri Maganbhai Durlabhbhai. The learned Mamlatdar,

vide his order dated 1.6.85 in RTS Case No. 12/84 observed that Shri Maganbhai Durlabhbhai had already sold the property during his lifetime to Shri Kanjibhai Jivanji Patel and Shri Durlabhbhai Jivanji Patel, the present petitioners, therefore, further proceedings be taken in the matter as to when the land was purchased, when the sale deed was registered, whether they were holding the lands within limits and after verification of all the facts about the land purchased by the petitioners, entry be made in favour of the petitioners. The Mamlatdar also observed that the successors of Shri Lalbhai Nichabhai Desai could not be treated to be heirs and successors of Shri Maganbhai Durlabhbhai. But he, however, observed that entry on the basis of succession in relation to the land belonging to Shri Lalbhai Nichabhai be made in the revenue records in favour of objectors, Navinchandra Lalbhai Desai and six others.

5. Shri Navinchandra Lalbhai Desai and six others,

all heirs of Shri Lalbhai Nichabhai Desai filed Appeal RTS No. 63/85. The said appeal came to be disposed of by the Deputy Collector, holding that the order passed by the Mamlatdar, Valsad, on 1.6.85 canceling the mutation entry no. 1789 was proper. He also observed that other decisions in the said matter were not relevant to the succession rights in dispute and as the same were were not applicable, same were set aside. He also observed that as the deceased Shri Maganbhai Durlabhbhai died without leaving any heirs, the Mamlatdar should start proceedings under Section 72 of the Bombay Land Revenue Code. The present petitioners being aggrieved by such directions filed RTS Revision No. 19 of 1979 before the Collector, Valsad, who, vide his impugned order dated 1st September, 1988 dismissed the revision and directed that the orders passed by the Deputy Collector in RTS Appeal No. 63/85 [dated 26.3.87] because of the defect in the proceedings be also set aside. He referred the matter to the Assistant Collector, Valsad for taking action in accordance with law

and the directions contained in the said order. The present petitioners took up the matter before the State Government in SRD / VLS / HKP / 22 / 88 / VASHI / 1085, which was dismissed on 16.9.89. However, the Additional Principal Secretary [Appeals] Revenue Department, in the revision filed by the present petitioners made some modification in the order passed by the Collector and directed that in the entry no. 1789, true position be shown. He also directed the Collector to complete the proceedings under Section 72 of the Bombay Land Revenue Code. Being aggrieved by the orders directing initiation of proceedings under Section 72 of the Bombay Land Revenue Code [“Code” for short] the petitioners are before this Court.

6. Shri J.B. Pardiwala, learned counsel for the petitioners submits that present was a matter where successors of Shri Lalbhai Nichabhai Desai were challenging entry no. 1789 and were demanding that they being successors of deceased Shri Maganbhai Durlabhbhai, be brought on the

records and if there was no dispute before the authorities in relation to the sale dated 4.1.68 registered on 11.1.68, neither the Deputy Collector nor the Collector, nor the State Government could direct that proceedings under Section 72 of the Code be taken. His further submission is that the sale continued to be effective right from 4.1.68/11.1.68 nobody challenged it and nobody issued any notice to the petitioner that the sale was in violation of the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act or was in violation of the provisions of Bombay Tenancy Act or Bombay Land Revenue Code. His submission is that the authorities could not widen the scope of the dispute nor could issue any directions for taking proceeding under Section 72 of the Code, that even otherwise, no proceedings under the Fragmentation Act or any other provisions of the revenue laws could be taken against them, as the sale deed was executed on 4.1.68 and up to 26th March, 1986, no proceedings were drawn against the

petitioners. Placing reliance upon a Division Bench Judgment of this Court, in the matter of **Valjibhai Jagjivanbhai v. State of Gujarat, reported in 2005b [2] GLH 34,** he submits that if the proceedings are not drawn well within reasonable time, then, the authority, which was in know of the transaction would not be entitled to take steps for setting aside the transaction.

7. Shri M.R.Mengdey, learned AGP for the State submits that the consolidation scheme had already been published on 3.4.67 and under the circumstances, no sale could be effected without the permission of the authorities. His submission is that if the sale is *void ab initio* or transaction is hit by Section 7/8 of the Fragmentation Act, then, officers were justified in directing registration of proceedings under Section 72 of the Code.

8. It is not in dispute before me that the sale deed was executed on 4.1.68 and was registered on 11.1.68. Ordinarily, the sale would become

effective from the date the sale deed is executed, but however, if the property sold is tangible immovable property worth more than one hundred rupees, then, the sale deed would be compulsorily registrable under Section 17 of the Indian Registration Act, otherwise, such transaction would not be admissible under Section 49 of the Indian Registration Act.

9. The question before the Mamlatdar was whether revenue entry no. 1789 was justified or not. No dispute was raised before the Mamlatdar that the sale was bad nor Mamlatdar ever issued any notice to the present petitioners that the sale being bad or in violation of the provisions of the Fragmentation Act, the sale would not be valid, therefore, the same would be taken up for consideration. From a perusal of the order passed by the Mamlatdar, it would clearly appear that he issued certain directions for mutation of names of the heirs and successors of Shri Lalbhai Nichabhai Desai and at the same time, issued certain directions that on inquiry, if it

is found that present petitioners had purchased the property, then, their names be also mutated. From the texture and tenor of the order passed by the Mamlatdar, it would clearly appear that there was no dispute between the parties about the validity of the sale and that the Mamlatdar also did not raise any question about violation of provisions of the Fragmentation Act.

10. The Deputy Collector, for the first time, in appeal filed by the successors and heirs of Lalbhai Nichabhai Desai, took up the issue about the intestate death of the deceased Shri Maganbhai Durlabhbhai and directed that proceedings under Section 72 of the Code be registered. In fact, by making such order, the Deputy Collector was taking the petitioners by surprise. If he really wanted to set aside the sale transaction of 4.1.68, then, he was obliged to issue notice to the petitioner to show cause that why sale transaction be not held to be bad and void. Instead of proceeding in accordance

with law, he proceeded in a manner which is unknown to law. He straightaway held that the sale was bad, Shri Maganbhai Durlabhbhai died intestate, therefore, proceedings under Section 72 of the Code should be drawn. Section 72 of the Bombay Land Revenue Code provides that in case of intestate death, the property would be succeeded by the State, the Collector of the District would be entitled to resume the property and dispose it of in accordance with law. In a case where some property was sold by the erst-while owner who later on died intestate, the property would not be deemed to be in the ownership of the deceased unless transaction of sale is set aside. The seller during his lifetime wold have no ownership rights over the property. It is not in dispute before me that before setting aside the transaction of sale, appropriate opportunity of hearing or notice was not given to the petitioners and the deceased Maganbhai Durlabhbhai had already sold the property to the present petitioners.

11.The Collector, in his wisdom, on one side held that the dismissal of the claim made by the legal heirs and successors of Shri Laljibhai Nichabhai Desai was justified and on the other, held that other findings were not required to be recorded, set aside the findings, but at the same time, issued directions to proceed in accordance with law. The petitioners, when made a complaint of this fact to the State Government, the Additional Principal Secretary [Appeals], Revenue Department, modified the order passed by the Collector and directed the Collector to take up proceedings under Section 72 of the Code. The procedure following by the Deputy Collector, Collector or Additional Principal Secretary [Appeals], Revenue Department, is patently illegal and contrary to law. When the law says that before taking any action against the interest of any person, a notice and appropriate opportunity of hearing should be afforded, then, the Deputy Collector / Collector / Additional Principal Secretary were

obliged and duty bound to issue a notice to the petitioners to show cause that why sale dated 4.1.68/11.1.68 be not held to be bad and the sale transaction be not set aside. Unfortunately, no notice was issued and the authorities simply held that the sale was bad. Such orders cannot be approved. The orders passed by the Deputy Collector, the Collector and the Additional Principal Secretary, setting aside the sale transaction of 4.1.68/11.1.68 deserve to and are accordingly set aside. Similarly, the directions of the authorities to proceed under Section 72 of the Code are also set aside.

12. At this stage, in fact, it would be useful to refer to the judgment in the matter of Valjibhai Jagjivanbhai [supra]. In the said matter, a learned Single Judge of this Court, finding a conflict between the two judgments of this Court, referred the following question to the Division Bench.

"Can inordinate delay come in the way of authority acting under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 in declaring some sale transaction to be invalid on the ground of contravention of the relevant provisions contained therein?"

The Division Bench clearly observed that the authority which had to take an action if was in know of the facts and despite that it causes delay in issuing notice, then, such action would be held to be a belated bad action.

13. In the present matter, the sale deed was executed/registered on 4.1.68/11.1.68, nobody took any exception to the said sale deed at least for a period of 17 years. In the year 1985, when the Deputy Collector made certain observations against the interests of the present petitioners, then too, after learning about the transaction, he did not take any action after issuing appropriate notice to the

present petitioners. If no such notice was issued in the year 1985 or subsequent thereto, then, any action on the part of the revenue officers would be bad and would be taken to be a belated bad action.

14. Taking into consideration the totality of the circumstances and for the reasons aforesaid, I hold that the order dated 26.3.86 passed by the Deputy Collector, Valsad, order dated 1.9.88 passed by the Collector, Valsad and the order dated 16.9.89 passed by the Additional Principal Secretary [Appeals], Revenue Department, adverse to the interest of the petitioners' rights, are bad, those are accordingly quashed and set aside. The petition is allowed. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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